

## **REMARKS**

The Office Action dated December 12, 2008, has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

Claims 1, 4-11, 13 and 19-41 are currently pending in the application, of which claims 1, 13, 19, and 41 are independent claims. Claims 1, 11, 13, 19, and 41 have been amended simply to use the American spellings of the relevant words. Entry of the amendments is respectfully requested, because the amendments do not raise any new issues that could conceivably require any further consideration and/or search. Claims 1, 4-11, 13, and 19-41 are respectfully submitted for consideration in view of the following remarks.

### ***Claim Rejections under 35 U.S.C. §103(a)***

#### **Claims 13 and 19-41**

The Office Action rejected claims 13 and 19-41 under 35 U.S.C. §103(a) as being allegedly unpatentable over 3GPP TS 32.215v 4.00 (2001-09), ("3GPP") in view of WO 02/098099 of Lialiamou *et al.* ("Lialiamou"). The Office Action acknowledged that 3GPP does not disclose all of the features of the rejected claims and cited Lialiamou to remedy the deficiencies of 3GPP. Applicant respectfully traverses this rejection.

Claim 13, upon which claims 21-30 depend, is directed to a method including storing, in a first memory, information identifying one of a plurality of charging nodes

associated with a communication session of a communications system as a default charging node to which a first communications node is to send charging information for the session. The method also includes sending the charging information for the session from the first communications node to the default charging node when the default charging node is available, after a period during which the default charging node is unavailable regardless of availability of any other charging node. The method further includes billing in the communications system based on the charging information.

Claim 19, upon which claims 20 and 31-40 depend, is directed to a gateway communication node including a memory configured to store information identifying a default charging node associated with a communication session to which the node is to send charging information for the session. The node is configured to send charging information for the session to the default charging node when the default charging node is available, after a period during which the default charging node is unavailable regardless of availability of any other charging node.

Applicant respectfully submits that the combination of 3GPP and Lialiamou fails to disclose or suggest all of the elements of any of the presently pending claims.

The 3GPP specification generally relates to charging management, and more specifically to a charging data description for the packet switched (PS) domain. 3GPP does not disclose or suggest “identifying one of said charging nodes as being a default charging node” (as recited in claim 1) or where charging information is

sent to the default charging node “when said default charging node is available” (as also recited in claim 1).

The Office Action does not appear to have explicitly identified these features of the claims. As MPEP 2141 (II) indicates, “When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to: (A) The claimed invention must be considered as a whole; (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D) Reasonable expectation of success is the standard with which obviousness is determined. *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).” Applicant respectfully submits that the claim has not been considered as a whole, in that the Office Action has not particularly addressed how it is alleged that 3GPP discloses “identifying one of said charging nodes as being a default charging node” (as recited in claim 1) or where charging information is sent to the default charging node “when said default charging node is available” (as also recited in claim 1).

Furthermore, it is respectfully submitted that, in 3GPP, there is no disclosure of a charging node at all. The Examiner is invited to state explicitly where this feature is found with reference to specific text in 3GPP. The Office Action

referred generation to Annex A and certain paragraphs thereof, but these portions of 3GPP do not mention a charging node.

In particular Annex A refers merely to charging characteristics it also refers to charging profiles. However there is no disclosure of a charging node. Moreover, there is no disclosure of a plurality of charging nodes, or where any of those nodes is a default charging node.

Again, the Office Action fails to state where there is any disclosure of

- i) charging node;
- ii) a further charging node; and
- iii) a default charging node.

It is respectfully submitted that there is no disclosure in 3GPP of these features. 3GPP merely refers to an SGSN home default. The SGSN is not a charging node. Furthermore there is no disclosure of any case of reverting back to a particular charging node (such as a default charging node).

Therefore there are a number of features of the independent claims which are not disclosed or even hinted at in 3GPP. It is noted, however, that the Office Action has not relied upon 3GPP alone, but on 3GPP as combined with Lialiamou.

Lialiamou generally relates to charging in a telecommunications network. In a Lialiamou, session-specific event data is collected in a telecommunications network where sessions are connected through a number of network entities that generate event data and have mutual signaling connections.

As far as the Office Action's reference to Lialiamou is concerned, Applicant respectfully submits that the Office Action has referenced only a part of a claim feature, and has done so in such a way that the claim feature does not make sense.

Specifically the Office Action refers to "a period during which said default charging node is unavailable regardless of availability of any other charging node." This way of breaking up the claim makes little grammatical sense. Specifically, it is respectfully submitted that in the broadest reasonable interpretation of the claim, the clause "regardless of availability of any other charging node" modifies the verb "send."

As presented in the Office Action, however, it is unclear whether the Office Action reflects a proper understanding of the claim, or whether the Office Action has misinterpreted the clause to some how to refer to the "unavailable" status of the default charging node. Unfortunately, because the Office Action lacks an explanation of the rejection, it is unclear whether the Office Action has simply quoted the claim terminology in an unusual way, or whether the Office Action has made a fundamental error in grammatically parsing the claim. If it is the latter case, it is respectfully submitted that (from a grammatical standpoint) the only available referent for the clause "regardless of availability of any other charging node" is the verb "send," such that the claim recites that "said first node and said second node are configured to send [the information to the default node] regardless of availability of any other charging node."

In case the Office Action has properly understood the claim, and has viewed Lialiamou as corresponding to what is recited in the claim, Applicant respectfully disagrees. Figure 4 of Lialiamou (cited in the Office Action) does not make any reference to any configuration where charging information is sent to a default charging node using information stored in a memory, where the default charging node is available, and where this availability is after a period during which the charging node is unavailable regardless of availability of any other charging nodes.

The Office Action has further made vague reference to “description,” without explaining how the “description” is alleged to correspond with what is claimed.

With reference to the sub-claims, the Office Action referred to specific pieces of description, but again, in these there is no reference to gateways as being charging gateways/nodes (which appears to be the Office Action’s unstated premise). Should the Office Action persist in using Lialiamou, it is respectfully requested that the Office Action identify where, in this document, there is any reference to

- a) a charging node;
- b) more than one charging node;
- c) a default charging node;
- d) where the nodes are configured to send respective charging information for a session to a default charging node using information stored in the first memory and where

when said default charger node is available, after a period during which said default charging node is unavailable regardless of availability of any other charging node; and

e) why one of ordinary skill in the art would wish to incorporate Lialiamou with 3 GPP.

It is respectfully submitted, therefore, that even if the references were combined, several features of each of the independent claims would not be found in the applied combination (as proven above). Furthermore, the Office Action has not established a reason (such as teaching, motivation, or suggestion) that one of ordinary skill in the art would have found to combine the references. The Office Action at (for example) page 3, simply asserts that it would be obvious to combine the references, but does not state (much less establish based on evidence) why such a combination would be obvious.

In *KSR (KSR Int'l Co. vs. Teleflex, Inc.)* the Supreme Court reiterated the Federal Circuit's instructions, *In re Kahn*, 441 F. 3d 977, 988, (Fed. Cir. 2006) that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, slip op. at 14. In this case the rejection lacks articulated reasoning rational underpinnings that support the legal conclusion of obviousness, and, thus, the rejection should be withdrawn.

The distinctions above have been presented with respect to the specific recitations found in claim 1. The same or similar features may be found in each of independent claims 13, 19, and 41 (each of which has its own scope). Additionally, claims 20-40 depend

respectively from, and further limit, claims 13 and 19. It is, therefore, respectfully submitted that each of claims 13 and 19-41 recite subject matter that is neither disclosed nor suggested in the cited art, and it is respectfully requested that the rejection of claims 13 and 19-41 be withdrawn.

### **Claims 1 and 4-11**

The Office Action rejected claims 1 and 4-11 under 35 U.S.C. §103(a) as being allegedly unpatentable over allegedly Admitted Prior Art (“APA”) in view of 3GPP and further in view of Lialiamou. The Office Action, in essence, acknowledged that the combination of 3GPP and Lialiamou does not disclose all of the features of claims 1 and 4-11, and cited APA to overcome the deficiencies of the combination of 3GPP and Lialiamou, although the Office Action presented that rejection with APA as the primary reference. Applicant respectfully traverses this rejection.

At least some of the deficiencies of 3GPP and Lialiamou with respect to claim 1 (upon which claims 4-11 depend) have been demonstrated above. APA does not remedy these deficiencies, and consequently, the rejection cannot be maintained.

Specifically, although the APA does make reference to “charging nodes” the APA specifically distinguishes these nodes from the GGSN and SGSN nodes that the Office Action has apparently viewed as “charging nodes” in 3GPP. Thus, even if 3GPP were combined for the conclusory reason stated in the Office Action (for which no supporting evidence is provided), the combination would not involve any modification to the



“charging nodes” (or their operation) in APA, and consequently the combination would not disclose what is claimed.

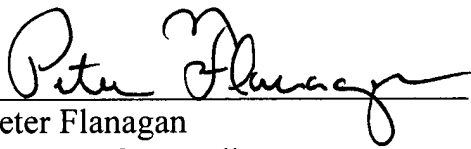
Additionally, the same problems with respect to the further combination of Lialiamou exist with respect to this combination, in that no reason at all for the combination is even stated, much less demonstrated from evidence. Thus, it is respectfully submitted that the rejection of claims 1 and 4-11 is improper and must be withdrawn.

For the reasons set forth above, it is respectfully submitted that each of claims 1, 4-11, 13 and 19-41 recites subject matter that is neither disclosed nor suggested in the cited art. It is, therefore, respectfully requested that all of claims 1, 4-11, 13 and 19-41 be allowed, and that this application be passed to issuance.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, Applicant’s undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

  
Peter Flanagan  
Attorney for Applicant  
Registration No. 58,178

**Customer No. 32294**  
SQUIRE, SANDERS & DEMPSEY LLP  
14<sup>TH</sup> Floor  
8000 Towers Crescent Drive  
Vienna, Virginia 22182-6212  
Telephone: 703-720-7800  
Fax: 703-720-7802

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